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EXAMINER

REICHLE, KARIN M

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/037,457
Filing Date: December 31, 2001
Appellant(s): MORMAN ET AL.

Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10-26-06 appealing from the Office action mailed 3-31-06.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. The rejection of claim 55 under 35 USC 103(a) as being unpatentable over Stevens '598 in view of Vogt, see page 2 of the Brief, Section III, last paragraph thereof.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,892,598	STEVENS et al	01-1990
4,720,415	VANDER WIELEN	01-1988
4,657,802	MORMAN	04-1987
4,701,172	STEVENS	10-1987
4,756,709	STEVENS	07-1988
6,149,638	VOGT et al	11-2000
5,486,166	BISHOP et al	01-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Ground A:

Claims 45-46, 50-68, 76-85 and 88-95 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

On page 6, lines 15-20, Appellant defines the terminology “affixed” as including both direct and indirect affixing. Therefore, if a portion of a first structure is “affixed” to a second structure, the entire first structure is “affixed” because its entirety is either directly or indirectly joined to the second structure. Therefore, the first structure is either entirely affixed or not affixed at all as “affixed” is defined. Therefore it is unclear how the absorbent body is “affixed”, i.e. secured, along “at least a portion” or “at least in part” as claimed in the claims, specifically 66, 68, 88 and 95. Also note page 31, lines 8 et seq of the description. Thus, due to the definition

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of “affixed” and like terms on page 6, and the terminology “at least a portion” or “at least in part” in all the claims, it is unclear what the structure defined by the terminology “affixed” is.

Grounds B-D:

Claim Language Interpretation

The terminology of the claims is interpreted in light of the definitions set forth on pages 3-8. Due to the lack of clarity with regard to the terminology “affixed”, see discussion supra, any amount of affixment will be interpreted as meeting the terms of the claims.

Ground C:

Claim Rejections - 35 USC § 102

Claims 45-46, 50-54, 56-65, 88-92 and 95 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens '598.

Claim 95: See Figures, especially Figures 3A, and 19A-19C, the stretchable chassis is 12, see claim 4 of '598, and the discussion of claims 50-54 infra, the absorbent body is 32 which is affixed, directly or indirectly, along a portion of its outer surface to the inner surface of the chassis at 46, 48, and 50, see col. 6, lines 9-24 and 30-35 and the Claim Language Interpretation section supra, and the inner surface 34 thereof lies against the wearer during use, see Figures. As also discussed infra, Figures 19A-C, as contrasted to, e.g., Figure 15, teach the inner surface of the body being uncovered, note element 12 is the chassis and 42 is the inner surface of the body at the end thereof, and a portion of the chassis is uncovered as claimed. It is the Examiner's first

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position that the reference teaches the chassis is stretchable independent of the absorbent body, see, e.g., col. 6, lines 13-18 and the structure and function of lines 10-16 as claimed. In any case, the Examiner's second position, the Stevens reference teaches all the claimed structure. Claim 95, lines 11-13 and 15 et seq defines properties, capabilities and function of such claimed structure. Therefore there is sufficient factual basis to conclude such properties, functions and capabilities are also inherently present in the same structure of Stevens. See MPEP 2112.01. As seen in Figures 3A and 19A-19C, the inner surface of the absorbent body is free from contact with the chassis at the longitudinal ends of such body and Figures 19A-19C do not show such inner surface covered.

Claim 45: see col. 5, lines 23-25.

Claim 46: see points 46, 48 and 50 in Figures.

Claims 50-54: see col. 14, line 15-col. 18, line 19 of Stevens '598, and thereby Van der Wielen '415 and Morman '802, e.g., col. 27, lines 20-31 of '802, the chassis can be multiple layers of gathered, i.e. extensible, material and elastic material (it is noted that the claims do not limit each of the cover and liner to one layer only), i.e. each of the cover and liner can be a gatherable or extensible layer or an elastic layer or a combination of at least one extensible layer and one elastic layer and, e.g., Van der Wielen et al '415 at col. 12, lines 12-15, i.e. all the layers of the chassis can be elastic.

Claims 56-58: see also col. 10, lines 45-50 in addition to already mentioned claim 4 of Stevens.

Claims 59-62: see portions cited with respect to claims 50-54, especially '802 at the paragraph bridging cols. 19-20 and col. 14, line 26-col 16, line 12, and Stevens '598 at col. 17,

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line 33-col. 18, line 1, i.e. the cover can be a polypropylene spunbond gatherable layer laminated with an adhesive or tacky elastic layer of SIS, and col. 10, line 60-col. 14, line 14 of Stevens '598, i.e. a thermoplastic nonwoven web of multi-block elastomeric copolymers.

Claims 63-65: see col. 5, lines 59-61 and col. 6, lines 1- 8 and col. 1, lines 15-21 of Stevens '598, and thereby '172 at col. 7, lines 12-16, i.e. absorbent core or composite wrapped with tissue.

Claims 91-92: see col. 1, lines 15-21 of Stevens '598, and thereby '172 at the Figures, elements 58 and 60 thereof lie between portions of the folded over cover which cover can include more than one layer, see discussion of claims supra, e.g., 50-54, i.e. elements 58 and 62 as taught by the prior art lie between a portion of the liner and outer cover. It is noted that the claims do not require the member contacting the outer cover and liner simultaneously. It is also noted that the claims do not require members of specific dimensions.

Claims 88-90: see discussion of claims 91-92 and 95, supra, i.e. these claims require elements discussed already with respect to claim 95 and 91-92.

Ground D:

Claims 88-90 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens '709.

See Figures, the stretchable chassis is 20, see col. 4, lines 15-31, col. 17, line 10-col. 21, line 14, and thereby Van der Wielen '415 and Morman '802, e.g., col. 27, lines 20-31 of '802, the chassis can be multiple layers of gathered, i.e. extensible, material and elastic material (it is noted that the claims do not limit each of the cover and liner to one layer only), i.e. each of the cover and liner can be a gatherable or extensible layer or an elastic layer or a combination of at

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least one extensible layer and one elastic layer and, e.g., Van der Wielen et al '415 at col. 12, lines 12-15, i.e. all the layers of the chassis can be elastic, the absorbent body is 22, i.e. wrapsheet, see col. 7, lines 16-19, core 38, and absorbent body liner is 42 which is affixed at 50 and/or 45, see col. 7, lines 20-25 and the Claim Language Interpretation section supra, and the surface 42 thereof lies against the wearer during use, see Figures. See also elements 58 and 62 which lie between portions of the folded over chassis which chassis can include more than one layer, see discussion supra, i.e. elements 58 and 62 as taught by the prior art lie between a portion of the liner and outer cover. It is noted that the claims do not require the member contacting the outer cover and liner simultaneously. Also, with regard to lines 14-15 of claim 88, it is the Examiner's first position that the reference teaches the chassis is stretchable independent of the absorbent body, see, e.g., col. 7, lines 5-7 and 20-25 and col. 4, lines 32-48. In any case, the Examiner's second position, the Stevens reference teaches all the claimed structure. Claim 88, lines 14-15 define properties, capabilities and function of such claimed structure. Therefore there is sufficient factual basis to conclude such properties, functions and capabilities are also inherently present in the same structure of Stevens. See MPEP 2112.01.

Ground B:

Claims 66-68, 76-85, and 93-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens '598 in view of Vogt '638 and Bishop et al '166.

Claims 66-68, 77-83, 85 and 93-94: The Stevens device includes all the claimed structure, see discussion supra with respect to Grounds C and D, except for a surge layer and its location. See, e.g., col. 1, lines 7-9 and col. 3, lines 31-32 of Stevens '598, i.e. desires

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containment of fluids, i.e. prevention of leakage. See also element 78 in the Figures which is a surge layer and col. 4, lines 58-61, col. 9, lines 41-61 and col. 5, lines 63-66 of Vogt and col. 3, lines 12-36 of Bishop. To employ a surge layer and one in the claimed location as taught by Vogt and Bishop on the Stevens device would be obvious to one of ordinary skill in the art in view of the recognition that such would aid in the containment of fluids/prevention of leakage and the desirability of such by Stevens.

Claim 76: Applicant claims the chassis liner being a neck stretched spunbond web which Stevens does not teach. However, see col. 19, lines 9-13 of Stevens and col. 7, line 54-col. 8, line 5 and col. 8, lines 21-51 of Vogt, i.e. at the very least teaches a resiliently stretchable cover or chassis can be either a stretch-bonded laminate or a laminate in which the inner layer is a neck-stretched spunbond web. Therefore to make the resiliently stretchable stretchbonded laminate of the chassis or cover of Stevens a cover or chassis of a elastic laminate in which the inner layer is a neck stretched spun bond web would be obvious in view of the interchangeability as taught by Vogt.

Claim 84: It is noted that the terminology "low stretch" is relative absent claiming of specific dimensions of stretchability and thereby, at least one of the materials of the absorbent body is considered "low stretch material".

(10) Response to Argument

Ground A:

Claims 66-67, 76-85 and 93-94:

Appellant argues that the enumerated claims do not include the terminology “affixed” and/or “along at least a portion”. However, such arguments are deemed not persuasive because such are narrower than the rejection and/or claim language. Attention is again invited to Section 9, Ground A *supra*, i.e. “As already discussed, i.e. ‘On page 6, lines 15-20, Appellant defines the terminology ‘affixed’ as including both direct and indirect affixing. Therefore, if a portion of a first structure is ‘affixed’ to a second structure, the entire first structure is ‘affixed’ because its entirety is either directly or indirectly joined to the second structure. Therefore, the first structure is either entirely affixed or not affixed at all as ‘affixed’ is defined. Therefore it is unclear how the absorbent body is ‘affixed’, i.e. secured, along ‘at least a portion’ or ‘at least in part’ as claimed in the claims, specifically 66, 68, 88 and 95. Also note page 31, lines 8 et seq of the description. Thus, due to the definition of ‘affixed’ *and like terms* on page 6, and the terminology ‘at least a portion’ or ‘at least in part’ in all the claims, it is unclear what the structure defined by the terminology ‘affixed’ is”. Attention is also directed to the terminology “secured”, i.e. *terminology like* “affixed”, and “at least in part” on line 16 of claim 66 and the terminology “affixed” and “in a lateral attachment pattern” in claim 67. It is further noted that claim 67 depends from claim 66, i.e. includes the limitation “at least in part” of claim 66.

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Claims 45-46, 50-65, 68, 88-92 and 95:

Appellant's arguments with respect to the terminology "affixed" have been considered but are deemed not persuasive for the reasons set forth in Section 9, Ground A supra, and because such are narrower than the entirety of the disclosure. For example, the explicit definition of "affixed" does not limit indirect affixment to elements affixed directly to an, i.e. one, intermediate element despite what definition was "intended" as argued at page 10, lines 16-22 of the Brief. For another example, the specification taken as a whole does not preclude a portion of the absorbent body being directly unaffixed while another portion is directly affixed, but this is not what is claimed.

The rejection of claims 45-46, 50-68, 76-85 and 88-95 is deemed proper and maintained.

Ground C:Claims 45-46, 50-54, 56-65 and 95:

Appellant argues that the Stevens '598 reference fails to anticipate claim 95, and thereby claims 45-46, 50-54 and 56-65 which depend therefrom, because the '598 reference does not teach the inner surface of the absorbent body being uncovered at the longitudinal ends thereof. However, such arguments are deemed not persuasive because they are narrower than the teachings of '598. The Figures of '598, especially Figure 19C, clearly show the inner surface of the longitudinal ends 42 being uncovered, i.e. contrary to the arguments the ends of the absorbent insert are not disposed within the folded ends of the outer cover element 12 but rather the outer cover 12 is disposed within the ends of the insert in Figures 19A and B and a separate piece of

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material 58 covers the end of the outer cover 12 not the insert for engaging fasteners on the insert 32 in Figure 19C.

Claims 88 and 90:

Appellant argues the Stevens '598, and thereby '172, does not disclose leg elastic members spaced laterally and interposed between an outer cover layer of a multilayer chassis and the liner layer of the multilayer chassis as claimed in claim 88 and thereby, claim 90 dependent therefrom. However such arguments are deemed not persuasive because they are narrower than the teachings of the prior art and/or the claim language. As discussed in Section 10, Ground C, supra with respect to claims 50-54 and claims 91-92, the prior art to Stevens, e.g. '172, teaches a multilayer chassis which includes an outer cover layer and inner layer and which is folded about the elastic members such that the elastic members 58, 60 and 62 are interposed between multilayer portions thereof and thereby, between a portion of a layer thereof which is the inner layer and a portion of a layer thereof which is the outer cover layer. As also noted supra, the claim language does not require the member contacting the outer cover and liner simultaneously nor does it preclude such folding over.

Claim 89:

Appellant makes arguments similar to those made with respect to claims 88 and 90 in the preceding paragraph also with regard to the prior art to Stevens and the waist elastic member(s) as claimed in claim 89. However such arguments are also deemed not persuasive with respect to claim 89 because they are narrower than the teachings of the prior art and/or the claim language for the same reasons as set forth in preceding paragraph with respect to claims 88 and 90.

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Additionally the Figures of Stevens, e.g. '172, show the waist elastic member(s) 58 and/or 60 extending longitudinally substantially less than the length of the chassis.

Claims 91-92:

Appellant makes arguments similar to those made with respect to claims 88-90 in the preceding two paragraphs also with regard to the prior art to Stevens and the elastic member(s) as claimed in claims 91-92. However such arguments are also deemed not persuasive with respect to claim 89 because they are narrower than the teachings of the prior art and/or the claim language for the same reasons as set forth in the preceding two paragraphs with respect to claims 88-90.

The rejection of claims 45-46, 50-54, 56-65, 88-92 and 95 under 35 USC 102(b) is deemed proper and maintained.

Ground D:

Claims 88 and 90:

Appellant argues the Stevens '709 does not disclose leg elastic members spaced laterally and interposed between an outer cover layer of a multilayer chassis and the liner layer of the multilayer chassis as claimed in claim 88 and thereby, claim 90 dependent therefrom. However such arguments are deemed not persuasive because they are narrower than the teachings of the prior art and/or the claim language. As discussed in Section 10, Ground D, supra with respect to claims 89-90, the prior art to Stevens '709 teaches a multilayer chassis which includes an outer cover layer and inner layer and which is folded about the elastic members such that the elastic members 58, 60 and 62 are interposed between multilayer portions thereof and thereby, between

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a portion of a layer thereof which is the inner layer and a portion of a layer thereof which is the outer cover layer. As also noted supra, the claim language does not require the member contacting the outer cover and liner simultaneously nor does not it preclude such folding over.

Claim 89:

Appellant makes arguments similar to those made with respect to claims 88 and 90 in the preceding paragraph also with regard to the prior art to Stevens and the waist elastic member(s) as claimed in claim 89. However such arguments are also deemed not persuasive with respect to claim 89 because they are narrower than the teachings of the prior art and/or the claim language for the same reasons as set forth in preceding paragraph with respect to claims 88 and 90. Additionally the Figures of Stevens '709 show the waist elastic member(s) 58 and/or 60 extending longitudinally substantially less than the length of the chassis.

The rejection of claims 88-90 under 35 USC 102(b) is deemed proper and maintained.

Ground B:

Appellant argues that the Stevens '598 reference fails to anticipate claim 66, and thereby claims which depend therefrom because the '598 reference does not teach the inner surface of the absorbent body being uncovered at the longitudinal ends thereof as argued with respect to claim 95 in Ground C supra. However, such arguments are similarly deemed not persuasive because they are narrower than the teachings of '598. The Figures of '598, especially Figure 19C, clearly show the inner surface of the longitudinal ends 42 being uncovered, i.e. contrary to the arguments the ends of the absorbent insert are not disposed within the folded ends of the outer cover element 12 but rather the outer cover 12 is disposed within the ends of the insert in

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Figures 19A and B and a separate piece of material 58 covers the end of the outer cover 12 not the insert for engaging fasteners on the insert 32 in Figure 19C. Additionally Appellant argues that Stevens '598 fails to teach disclose a surge layer and a wrapsheet and that the Vogt and Bishop references which are relied upon to teach such do not teach and/or provide motivation for the claimed arrangement of surge layer, absorbent layer and wrapsheet and do not teach uncovered ends as alleged to be missing from the '598 reference. However such additional arguments are also deemed narrower than the teachings of the prior art and/or the rejections made relying upon them. Specifically the '598 reference teaches not only uncovered ends as previously discussed but also a wrapsheet, see discussion in Section 9, Ground C, claims 63-65 and Ground B, claim 66 supra. Furthermore the prior art rejection does not rely upon Vogt and Bishop to teach uncovered ends and a wrapsheet. The prior art combination of Stevens, Vogt and Bishop does teach, i.e. provide motivation, to employ a surge layer arranged as claimed, attention is again invited to Section 9, Ground B supra.

The rejection of claims 66-68, 76-85, and 93-94 under 35 USC 103 is deemed proper and maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Karin M. Reichle



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TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

